

In the Matter of the
Complaint Against
Rudy Stanko

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Richard McFadden (McFadden) of Billings, Montana, in a complaint filed with this office on May 17, 1994, alleges that Rudy Stanko (Stanko) violated section 13-35-214(1), Montana Code Annotated (MCA). The results of an investigation of the alleged violation are set forth in the summary of facts that follows.

1. Rudy Stanko is a candidate for Justice of the Peace in Department 1 of Yellowstone County.

2. McFadden complains about a flier prepared for Stanko's election campaign. The flier, a copy of which was provided by McFadden in support of his complaint, states: "Rudy Stanko for Justice of the Peace." It also states, in pertinent part, the following:

If I am elected Justice of the Peace the salary I receive (\$37,778.00 annually) will be donated to various community organizations.

3. McFadden alleges that this particular statement in the flier constitutes illegal influence of voters under Montana's election laws.

4. John Abarr, Stanko's campaign chairman, has stated in a response to the complaint that the campaign message at issue was

mailed to 34,000 households in the form of a postcard, and was hand-delivered in the form of a flier to another 5,000 people.

STATEMENT OF FINDINGS

Section 13-35-214, MCA, provides, in part, as follows:

Illegal influence of voters. No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration; . . .

A person who knowingly violates the statute is guilty of a misdemeanor. Section 13-35-103, MCA.

The Montana Supreme Court, in construing a similar statute under Montana's old Corrupt Practices Act, concluded that a candidate's offer to serve, if elected, at a salary less than that fixed by statute was a violation of the statute. Tipton v. Sands, 104 Mont. 1, 60 P.2d 662 (1936). The Court reasoned that when a candidate offers to discharge the duties of an elective office for less than the salary fixed by law (a salary which must be funded through taxation), he offers to reduce the amount of taxes each individual taxpayer must pay, and thus indirectly makes an offer to the voter of pecuniary gain. According to the Court, the offer is, in effect, an offer of money for the elector's vote.

This case, however, is distinguishable from Tipton. Here, Stanko has offered to serve at a salary less than that fixed by law. His offer will not reduce the amount of taxes each individual

taxpayer must pay, since according to the terms of his promise he will receive the salary provided by law. He has simply stated his intention to donate his salary to unnamed "community organizations." No offer of pecuniary gain has been made to any voter.

In Tipton the Court also quoted language from an old decision of the Supreme Court of Kansas:

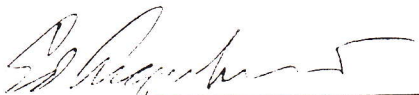
A further question may arise when the offer of the candidate carries with it no pecuniary benefit to the voter. As, for instance, should a candidate for a county office offer to give if elected a portion of his salary for the erection of a public fountain; or, if a candidate for a state office should offer if elected to endow a chair in some college; here it may be said that the voter is in no way influenced by considerations of personal gain. He receives no money in hand, his taxes will not be reduced, and he may in no manner be pecuniarily benefited by the donation. This presents a case going still beyond those which have been decided, and yet very probably the same decision should control such a case, and for this reason: wrong considerations are thrown into the scale to influence the vote of the elector. The theory of popular government is that the most worthy should hold the offices. Personal fitness. . . is the single test which the law will recognize. That which throws other considerations into the scale, and to that extent tends to weaken the power of personal fitness, should not be tolerated. It tends to turn away the thought of the voter from the one question which should be paramount in his mind when he deposits his ballot. It is, in spirit at least, bribery, more insidious, and therefore more dangerous, than the grosser form of directly offering money to the voter.

Tipton, 60 P.2d at 667-68 (quoting State v. Elting, 29 Kan. 397, 401-402 (1883)). The quoted language, however, is dicta. In other words, it was unnecessary for resolution of the issue before the Court--whether a promise to serve at less than the salary provided by law violates the statute. While it may very well reflect sound policy, my function is to construe Montana's statute and determine,

under the specific facts presented to me, whether it has been violated. My conclusion is that there has been no violation of section 13-35-214(1), MCA, under these facts. In making this determination I am guided by the rule that criminal statutes must be strictly construed and may not be extended by construction. Montana Automobile Association v. Greely, 193 Mont. 378, 389, 632 P.2d 300, 306 (1981); Shipman v. Todd, 131 Mont. 365, 368, 310 P.2d 300, 302 (1957). To establish a violation of section 13-35-214(1) MCA, requires evidence that the promise or offer was made "to or for any person on behalf of any elector or to or for any person." A general offer by a candidate to donate his salary to unnamed "community organizations" is too vague to support a conclusion that an improper promise or offer was made, and that the statute was therefore violated. There is no evidence that the promise was made to "induce" any particular elector to vote for Stanko, because the specific recipient of the proposed donation has not been specified in the offer.

Based on the facts and these findings, I conclude that no further action is warranted against Stanko.

DATED this 15th day of June, 1994.



Ed Argenbright, Ed.D.
Commissioner of Political Practices